

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

D-5 FRANCIS LOUIS VOGEL, III,

Defendant.

Case No. 14-20073

Hon. Bernard A. Friedman

Offenses:

18 U.S.C. § 371

18 U.S.C. § 1343

Maximum Penalty:

5 Years

20 Years

Maximum Fine:

\$250,000

Maximum Supervised Release:

3 Years

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant FRANCIS LOUIS VOGEL, III (D-5) and the government agree as follows.

1. GUILTY PLEA

A. Counts of Conviction

The defendant will enter a plea of guilty to Counts One and Seven of the Indictment, which charge conspiracy to commit wire fraud in violation of 18 U.S.C. § 371 and wire fraud in violation of 18 U.S.C. § 1343, respectively.

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B. Elements of Offense

The elements of Count One, conspiracy to commit wire fraud (18 U.S.C. § 371) are as follows.

1. Two or more persons conspired, or agreed, to commit the crime of wire fraud (18 U.S.C. §1343) in violation of 18 U.S.C. § 371;
2. The defendant knowingly and voluntarily joined the conspiracy; and
3. A member of the conspiracy did one of the overt acts described in the Indictment for the purpose of advancing or helping the conspiracy.

The elements of Count Seven, wire fraud (18 U.S.C. § 1343) are as follows.

1. The defendant devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises (or willfully participated in such a scheme with knowledge of its fraudulent nature).
2. The defendant acted with the intent to defraud.
3. That in advancing, furthering, or carrying out the scheme, the defendant transmitted or caused the transmission of any writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce.

C. Factual Basis for Guilty Plea

The following facts are a sufficient and accurate basis for defendant's guilty plea.

Beginning in approximately January of 2006 and continuing to approximately August of 2008, defendant Frank Vogel III (Vogel) did knowingly and willfully participate with others, including Andrew Bogandoff and Shayne Fowler, in a scheme to defraud and obtain money from commercial business people, located throughout the United States, by means of materially false and fraudulent pretenses, and in doing so, defendant transmitted or caused to be transmitted wire communication in interstate commerce.

Defendant Vogel worked through his Michigan corporation, Arlington Richfield, Inc. (ARI), which had an office located in Birmingham, Michigan in the Eastern District of Michigan, Southern Division. ARI was advertised by Vogel as a firm with the ability to assist businesses in securing commercial loans or capital funding.

Defendant Vogel, through ARI, would refer business people to Remington Financial Group, Inc. (Remington), a Pennsylvania Corporation, which operated across the United States. Remington advertised itself as a firm that provided capital

and financial services for business owners nationwide and that they had the ability to deliver debt and equity capital.

Defendant Vogel referred commercial business owners and developers who were seeking commercial loans to Remington in the hope of securing loans or capital funding from secondary market lenders based on Remington's representations that they had the ability to secure such funding. Vogel knew or should have known that Remington did not have the ability to secure funding as was represented, but continued to refer to them business owners looking for loans.

Vogel's customers entered into a contract, known as a Letter of Interest (LOI), with Remington, which was often printed with ARI letterhead paper. This LOI required the customers to remit a non-refundable up front "due diligence" fee. After that fee was sent, Remington would send a portion of this fee to Vogel as a brokerage referral fee. The due diligence fees were typically sent by the customers via interstate bank wires to a Remington bank account. The brokerage referrals fees were then sent from a Remington bank account to ARI's bank account via interstate bank wires. A review of ARI's bank account for the period between

January of 2006 and August of 2008 reveals approximately 70 wires from Remington to ARI totaling over \$1,111,000.

2. SENTENCING GUIDELINES

A. Standard of Proof

The Court will find sentencing factors by a preponderance of the evidence, following receipt of this Rule 11 Plea Agreement, the Presentence Report, and any other information that the Court may require of the parties.

B. Guideline Range

There are two sentencing guideline disputes. The government calculates the defendant's guideline range as 51 to 63 months, as set forth in the attached worksheets. The parties disagree as to the amount of loss to be considered under USSG § 2B1.1(b)(1) and the number of victims to be considered under USSG § 2B1.1(b)(2). The Court will make this factual determination at the time of sentencing. Besides these two issues, there are no sentencing guidelines disputes. Except as provided below, the government's recommended guidelines range is 51 to 63 months, and the defendant reserves the right to argue for a lower range based on the amount of loss and number of victims.

Except as necessary to the Court's determination regarding paragraph 2.B.1, neither party may take a position concerning the applicable guidelines that is different from any position of that party as noted above, and as reflected in the attached worksheets.

1. Findings That Increase The Government's Recommended Guidelines Range

If the Court finds that (i) the defendant's criminal history category is higher than reflected on the attached worksheets, or (ii) the offense level should be higher because, after pleading guilty, the defendant made any false statement to or withheld information from his probation officer, otherwise demonstrated a lack of acceptance of responsibility for his offense, or obstructed justice or committed any crime, and if any such finding results in a guidelines range higher than 51 to 63 months with respect to either Count One or Count Seven, the higher guidelines range becomes the government's recommended guidelines range in Paragraph 2.B.

2. Findings That Do Not Increase The Government's Recommended Guidelines Range

If the Court finds that defendant is a career offender, an armed career criminal, or a repeat and dangerous sex offender as defined under the sentencing guidelines or other federal law, and that finding is not already reflected in the

attached worksheets, this paragraph does not authorize a corresponding increase in the government's recommended guidelines range.

3. SENTENCE

The Court will impose a sentence pursuant to 18 U.S.C. §3553, and in doing so must consider the sentencing guidelines range.

A. Imprisonment

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties agree that any sentence of imprisonment in this case may not exceed the top of the sentencing guidelines range as determined in Paragraph 2.B. and in any case may not exceed 60 months.

B. Supervised Release

A term of supervised release follows the term of imprisonment. The Court may impose a term of supervised release on Counts One and Seven of no more than three (3) years. The agreement concerning imprisonment described above in Paragraph 3.A does not apply to any term of imprisonment which results from any later revocation of supervised release.

C. Special Assessment

The defendant will pay a special assessment of **\$200**.

D. Fine

There is no agreement as to fines.

E. Restitution

Part 1: Remington Victims

The term “Remington Victims” refers to the victims of the case which originated in the Eastern District of Pennsylvania and was transferred to the Eastern District of Michigan, which is the subject of this Plea Agreement. Defendant agrees to pay restitution to every identifiable victim of the defendant’s offenses, including relevant conduct stemming from the advance fee scheme subject to the charges outlined in the Indictment. Defendant reserves the right to object to the number of victims and amount of restitution as submitted by the government in regards to the “Remington Victims.” The Court will hold a hearing if necessary and will ultimately determine the amount of restitution to be ordered as a part of defendant’s sentence and judgment order.

Part 2: Michigan Victims

The term “Michigan Victims” refers to the victims of case 11-cr-20647 which was indicted in the Eastern District of Michigan charging the defendant with another fraudulent scheme.

In addition to the restitution in Part 1, the defendant agrees to pay restitution in the amount of **\$604,475** to the “Michigan Victims” as listed in Exhibit A attached to this Agreement and incorporated by reference. Of this amount, defendant reserves the right to object to paying restitution in the amount of \$25,000 to Century Home Builders and \$20,000 to RMR Pacific, LLC. The Court will hold a hearing if necessary to determine whether these amounts should be included in the restitution order to the “Michigan Victims.”

4. OTHER CHARGES

At the time of sentencing in this case, and immediately following the Court’s sentence, the government shall move to dismiss all charges contained in case no. 11-cr-20647 against defendant Frank Vogel III.

5. FORFEITURE OF PROPERTY

As part of this agreement, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, defendant agrees to forfeit to the United States, without contest, his interest, if any, in any property, real or personal, which constitutes or is derived from proceeds traceable to his violations of 18 U.S.C. §§ 371 and 1343, as alleged in Counts One and Seven of the Indictment, including the following:

- (a) Nineteen Thousand One Hundred Nine Dollars (\$19,109.00) in United States Currency, seized on July 14, 2011, at the residence of defendant

Francis Louis Vogel, Jr., at 29974 Harper Ave., St. Claire Shores, MI, further identified as Asset # 11-FBI-005276, and

- (b) Thirty Four Thousand Two Hundred Twenty Five Dollars (\$34,225.00) in United States Currency seized on or about June 28, 2011, from Comerica Bank Account Number 1852104312, held in the name of Arlington Richfield Inc., further identified as Asset # 11-FBI-004775,

(collectively referred to hereinafter as the "Subject Property"). Defendant agrees that the Subject Property is forfeitable to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 as proceeds of the offenses alleged in Counts One and Seven of the Indictment. Defendant agrees that there is a sufficient nexus between the Subject Property and the offenses to which defendant is pleading guilty.

Pursuant to 21 U.S.C. § 853(p), if, by any act or omission of the defendant, the Subject Property: cannot be located upon the exercise of due diligence; has been transferred, sold to or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty, defendant agrees to the forfeiture of any of his other real or personal property, up to the value of such unavailable assets.

In entering into the foregoing agreement with respect to forfeiture, defendant expressly waives his right to have a jury determine the forfeitability of his interest in the Subject Property as provided by Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure. With respect to the Subject Property, defendant agrees to the entry of one or more orders of forfeiture upon application by the United States at, or any time before, his sentencing in this case. Defendant further agrees to hold the United States, its agents and employees, harmless from any claims whatsoever in connection with the seizure or forfeiture of property covered by this Plea Agreement.

In entering into this agreement with respect to forfeiture, defendant knowingly, voluntarily, and intelligently waives any challenge to the above-described forfeiture based upon the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and/or the Due Process Clause.

Defendant further waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, pronouncement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and

waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

6. WITHDRAWAL OF GUILTY PLEA OR VACATION OF CONVICTION

A. Each Party's Right To Withdraw From This Agreement

The government may withdraw from this agreement at any time prior to this Court's acceptance of the defendant's guilty plea.

The defendant may withdraw from this agreement, and may withdraw his guilty plea if the Court decides to impose a sentence higher than the maximum allowed by Paragraph 3. This is the only reason for which the defendant may withdraw from this agreement. The Court shall advise defendant that if he does not withdraw his guilty plea under these circumstances, the Court may impose a sentence greater than the maximum allowed by Paragraph 3.

B. Consequences of Withdrawal of Guilty Plea or Vacation of Conviction

If defendant is allowed to withdraw his guilty plea or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement, including the charges in case no. 11-cr-20647. If additional charges are filed against the defendant within six months after the date the order vacating

defendant's conviction or allowing him to withdraw his guilty plea becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea or to any conduct reflected in the attached worksheets, the defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

7. WAIVER OF APPEAL

Defendant waives any right he may have to appeal his conviction. In addition, the defendant waives any right he may have to appeal his sentence and restitution order if the sentence of imprisonment imposed does not exceed the higher of 60 months or, if the Court makes a finding of the type specified in Paragraph 2.B.1, the top of the guidelines range as determined by the Court.

If the sentence imposed is within the guideline range recommended by the government in Paragraph 2B, the government agrees not to appeal the sentence, but retains its right to appeal any sentence below that range.

8. PARTIES TO PLEA AGREEMENT

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan.

9. SCOPE OF PLEA AGREEMENT

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to the defendant or to the attorney for the defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.


Notwithstanding the previous paragraph, if the defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.


This agreement also does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

10. ACCEPTANCE OF AGREEMENT BY DEFENDANT

This plea offer expires unless it has been received, fully signed, in the Office of the United States Attorney by **5:00 P.M. on 5/7/2014**. The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.

BARBARA L. MCQUADE
United States Attorney


CYNTHIA OBERG
CHIEF, WHITE COLLAR CRIME UNIT
ASSISTANT UNITED STATES ATTORNEY


ABED HAMMOUD
ASSISTANT UNITED STATES ATTORNEY

DATE: MAY 6, 2014

BY SIGNING BELOW, DEFENDANT ACKNOWLEDGES THAT HE HAS READ (OR BEEN READ) THIS ENTIRE DOCUMENT, UNDERSTANDS IT, AND AGREES TO ITS TERMS. HE ALSO ACKNOWLEDGES THAT HE IS SATISFIED WITH HIS ATTORNEY'S ADVICE AND REPRESENTATION. DEFENDANT AGREES THAT HE HAS HAD A FULL AND COMPLETE OPPORTUNITY TO CONFER WITH HIS LAWYER, AND HAS HAD ALL OF HIS QUESTIONS ANSWERED BY HIS LAWYER.


PENNY BEARDSLEE
ATTORNEY FOR DEFENDANT


FRANCIS LOUIS VOGEL, III
DEFENDANT

DATE: 5/7/14

WORKSHEET A (Offense Levels)

Defendant: Frank Louis Vogel, III Count(s): 1 and 7

Docket No: 14-20073 Statute(s): 18 U.S.C. §§1343 and 371

Complete one Worksheet A for each count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction) before applying the multiple-count rules in U.S.S.G. ch. 3, pt. D. However, in any case involving multiple counts of conviction, if the counts of conviction are all "closely related" to each other within the meaning of U.S.S.G. § 3D1.2(d), complete only a single Worksheet A.

1. BASE OFFENSE LEVEL AND SPECIFIC OFFENSE CHARACTERISTICS (U.S.S.G. ch. 2)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
<u>2B1.1(a)(1)</u>	<u>Wire Fraud</u>	<u>7</u>
<u>2B1.1(b)(1)(I)</u>	<u>Loss: More than \$1,000,000 and less than \$2,500,000</u>	<u>16</u>
<u>2B1.1(b)(2)(B)</u>	<u>Over 50 victims</u>	<u>4</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

2. ADJUSTMENTS (U.S.S.G. ch. 3, pts. A, B, C)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

3. ADJUSTED OFFENSE LEVEL

Enter the sum of the offense levels entered in Items 1 and 2. If this Worksheet A does not cover every count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction), complete one or more additional Worksheets A and a single Worksheet B.

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☒ *If this is the only Worksheet A, check this box and skip Worksheet B.*

☒ *If the defendant has no criminal history, check this box and skip Worksheet C.*

WORKSHEET C (Criminal History)

Date of defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses):

1. PRIOR SENTENCES

Prior Sentence of Imprisonment Exceeding 13 Months (U.S.S.G. §§ 4A1.1(a)): **3 POINTS**

Enter 3 points for each prior adult sentence of imprisonment exceeding one year and one month that either (1) was imposed within 15 years of the defendant's commencement of the instant offenses (taking into account relevant conduct and stipulated offenses) or (2) resulted in the defendant's confinement during any part of that 15-year period. (See U.S.S.G. §§ 4A1.1(a), 4A1.2(d)(1), (e)(1).)

Prior Sentence of Imprisonment of at Least 60 Days (U.S.S.G. §§ 4A1.1(b)): **2 POINTS**

Enter 2 points for each prior sentence of imprisonment of at least 60 days not counted under U.S.S.G. § 4A1.1(a) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(b), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and resulted in the defendant's confinement during any part of the 5-year period preceding the defendant's commencement of the instant offense (see U.S.S.G. §§ 4A1.1(b), 4A1.2(d)(2)(A)).

Other Prior Sentences (U.S.S.G. §§ 4A1.1(c)): **1 POINT**

Enter 1 point for each prior sentence not counted under U.S.S.G. § 4A1.1(a) or (b) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and was imposed within 5 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(d)(2)(B)). NOTE: No more than 4 points may be added under this item.

<u>Date of Imposition</u>	<u>Status*</u>	<u>Offense</u>	<u>Sentence</u>	<u>Release Date**</u>	<u>Points</u>

* If the defendant committed the offense before turning 18, indicate whether he or she was sentenced as a juvenile (J) or as an adult (A).

** A release date is required in only three situations: (1) when a sentence covered under U.S.S.G. § 4A1.1(a) was imposed more than 15 years before the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) but resulted in his or her confinement during any part of that 15-year period; (2) when a sentence counted under U.S.S.G. § 4A1.1(b) was imposed for an offense committed before the defendant turned 18 but resulted in his or her confinement during any part of the 5-year period preceding his or her commencement of the instant offense (taking into account relevant conduct and stipulated offenses); and (3) when 2 criminal history points are added pursuant to U.S.S.G. § 4A1.1(e) because the defendant committed the instant offense (taking into account relevant conduct and stipulated offenses) shortly after or during imprisonment resulting from a sentence counted under U.S.S.G. § 4A1.1(a) or (b) or while he or she was on escape status for such a sentence.

(rev. 06/99)

(WORKSHEET C, p. 2)

2. COMMISSION OF INSTANT OFFENSE WHILE UNDER PRIOR SENTENCE (U.S.S.G. § 4A1.1(d))

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) while under any criminal justice sentence having a custodial or supervisory component, including probation, parole, supervised release, imprisonment, work release, and escape status. (See U.S.S.G. §§ 4A1.1(d), 4A1.2(m), (n).) List the type of control and identify the sentence from which it resulted.

3. COMMISSION OF INSTANT OFFENSE SHORTLY AFTER OR DURING IMPRISONMENT (U.S.S.G. § 4A1.1(e))

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) either less than 2 years after release from imprisonment on a sentence counted under U.S.S.G. §§ 4A1.1(a) or 4A1.1(b) or while in imprisonment or escape status on such a sentence. However enter, only 1 point for this item if 2 points were added under Item 2. (See U.S.S.G. §§ 4A1.1(e), 4A1.2(n).) List the date of release and identify the sentence from which it resulted.

4. PRIOR SENTENCE RESULTING FROM CRIME OF VIOLENCE (U.S.S.G. § 4A1.1(f))

Enter 1 point for each prior sentence resulting from a conviction for a crime of violence that did not receive any points under U.S.S.G. § 4A1.1(a), (b), or (c) because such sentence was considered related to another sentence resulting from a conviction for a crime of violence. But enter no points where the sentences are considered related because the offenses occurred on the same occasion. (See U.S.S.G. §§ 4A1.1(f), 4A1.2(p).) Identify the crimes of violence and briefly explain why the cases are considered related. NOTE: No more than 3 points may be added under this item.

5. TOTAL CRIMINAL HISTORY POINTS

Enter the sum of the criminal history points entered in Items 1-4.

0

6. CRIMINAL HISTORY CATEGORYTotal Criminal History PointsCriminal History Category

0 – 1
2 – 3
4 – 6
7 – 9
10 – 12
≥ 13

I
II
III
IV
V
VI

I

WORKSHEET D (Guideline Range)**1. (COMBINED) ADJUSTED OFFENSE LEVEL**

Enter the adjusted offense level entered in Item 3 of Worksheet A or the combined adjusted offense level entered in Item 8 of Worksheet B.

27

2. ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY (U.S.S.G. § 3E1.1)

-3

3. TOTAL OFFENSE LEVEL

Enter the difference between Items 1 and 2.

24

4. CRIMINAL HISTORY CATEGORY

Enter "I" if the defendant has no criminal history. Otherwise, enter the criminal history category entered in Item 6 of Worksheet C.

I

5. CAREER OFFENDER / CRIMINAL LIVELIHOOD / ARMED CAREER CRIMINAL (U.S.S.G. ch. 4, pt. B)

a. Total Offense Level: If the career offender provision (U.S.S.G. § 4B1.1), the criminal livelihood provision (U.S.S.G. § 4B1.3), or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a total offense level higher than the total offense level entered in Item 3, enter the higher offense level total.

b. Criminal History Category: If the career offender provision (U.S.S.G. § 4B1.1) or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a criminal history category higher than the criminal history category entered in Item 4, enter the higher criminal history category.

6. GUIDELINE RANGE FROM SENTENCING TABLE (U.S.S.G. ch. 5, pt. A)

Enter the guideline range in the Sentencing Table (*see* U.S.S.G. ch. 5, pt. A) produced by the total offense level entered in Item 3 or 5.a and the criminal history category entered in Item 4 or 5.b.

51-63

7. STATUTORY RESTRICTIONS ON OR SUPERSESSION OF GUIDELINE RANGE

If the maximum sentence authorized by statute is below, or a minimum sentence required by statute is above, the guideline range entered in Item 6, enter either the guideline range as restricted by statute or the sentence required by statute. (*See* U.S.S.G. § 5G1.1.) If the sentence on any count of conviction is required by statute to be consecutive to the sentence on any other count of conviction, explain why.

WORKSHEET E (Authorized Guideline Sentences)

1. PROBATION (U.S.S.G. ch. 5, pt. B)

a. Imposition of a Term of Probation (U.S.S.G. § 5B1.1)

☒

1. Probation is not authorized by the guidelines (minimum of guideline range > 6 months or statute of conviction is a Class A or a Class B felony). If this box is checked, go to Item 2 (Split Sentence).

☐

2. Probation is authorized by the guidelines (minimum of guideline range = zero months).

☐

3. Probation is authorized by the guidelines, provided the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention satisfying the minimum of the guideline range (minimum of guideline range > 0 months but ≤ 6 months).

b. Length of Term of Probation (U.S.S.G. § 5B1.2)

☐

1. At least 1 year but not more than 5 years (total offense level ≥ 6).

☐

2. No more than 3 years (total offense level < 6).

c. Conditions of Probation (U.S.S.G. § 5B1.3)

The court must impose certain conditions of probation and may impose other conditions of probation.

2. SPLIT SENTENCE (U.S.S.G. § 5C1.1(c)(2), (d)(2))

☒

- a. A split sentence is not authorized (minimum of guideline range = 0 months or > 10 months).

☐

- b. A split sentence is authorized (minimum of guideline range > 0 months but ≤ 10 months). The court may impose a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention for imprisonment, provided that at least one-half of the minimum of the guideline range is satisfied by imprisonment (if the minimum of the guideline range is 8, 9, or 10 months), or that at least one month is satisfied by imprisonment (if the minimum of the guideline range is 1, 2, 3, 4, or 6 months). The authorized length of the term of supervised release is set forth below in Item 4.b

3. IMPRISONMENT (U.S.S.G. ch. 5, pt. C)

A term of imprisonment is authorized by the guidelines if it is within the applicable guideline range (entered in Item 6 of Worksheet D). (See U.S.S.G. § 5C1.1.)

(WORKSHEET E, p. 2)

4. SUPERVISED RELEASE (U.S.S.G. ch 5., pt. D)**a. Imposition of a Term of Supervised Release (U.S.S.G. § 5D1.1)**

The court must impose a term of supervised release if it imposes a term of imprisonment of more than one year, or if it is required to do so by statute. The court may impose a term of supervised release if it imposes a term of imprisonment of one year or less.

b. Length of Term of Supervised Release (U.S.S.G. § 5D1.2)

- ☐ 1. At least 3 years but not more than 5 years, where the count of conviction is a Class A or a Class B felony, i.e., an offense carrying a maximum term of imprisonment \geq 25 years.
- ☒ 2. At least 2 years but not more than 3 years, where the count of conviction is a Class C or a Class D felony, i.e., an offense carrying a maximum term of imprisonment \geq 5 years but $<$ 25 years.
- ☐ 3. 1 year, where the count of conviction is a Class E felony or a Class A misdemeanor, i.e., an offense carrying a maximum term of imprisonment $>$ 6 months but $<$ 5 years.
- ☐ 4. The statute of conviction requires a minimum term of supervised release of _____ months.

c. Conditions of Supervised Release (U.S.S.G. § 5D1.3)

The court must impose certain conditions of supervised release and may impose other conditions of supervised release.

5. RESTITUTION (U.S.S.G. § 5E1.1)

- ☐ 1. The court will determine whether restitution should be ordered and in what amount.
- ☒ 2. Full restitution to the victim(s) of the offense(s) of conviction is *required* by statute. (See, e.g., 18 U.S.C. §§ 3663A, 2327.) The parties agree that full restitution is \$ TBD.
- ☐ 3. The parties agree that the court may order restitution to the victim(s) of the offense(s) of conviction in any amount up to and including \$ _____. (See 18 U.S.C. §§ 3663(a)(3).)
- ☐ 4. The parties agree that the court may *also* order restitution to persons other than the victim(s) of the offense(s) of conviction. (See 18 U.S.C. §§ 3663(a)(1)(A), 3663A(a)(3).)
- ☐ 5. Restitution is not applicable.

(WORKSHEET E, p. 3)

6. FINE (U.S.S.G. § 5E1.2)**a. Fines for Individual Defendants**

The court must impose a fine unless “the defendant establishes that he [or she] is unable to pay and is not likely to become able to pay any fine.” (See U.S.S.G. § 5E1.2(a).) Generally, the fine authorized by the guidelines is limited to the range established in the Fine Table. (See U.S.S.G. § 5E1.2(b).) However, there are exceptions to this general rule. (See U.S.S.G. § 5E1.2(b), (c)(4).)

b. Fine Range from Fine Table (U.S.S.G. § 5E1.2(c)(3))

<u>Minimum Fine</u>	<u>Maximum Fine</u>
<u>\$10,000</u>	<u>\$100,000</u>

7. SPECIAL ASSESSMENT(S) (U.S.S.G. § 5E1.3)

The court must impose a special assessment on every count of conviction. The special assessments for individual defendants are

- \$100.00 for every count charging a felony (\$50.00 if the offense was completed before April 24, 1996)
- \$ 25.00 for every count charging a Class A misdemeanor,
- \$ 10.00 for every count charging a Class B misdemeanor, and
- \$ 5.00 for every count charging a Class C misdemeanor or an infraction.

The defendant must pay a special assessment or special assessments in the total amount of \$ \$100.00.

8. ADDITIONAL APPLICABLE GUIDELINES, POLICY STATEMENTS, AND STATUTES

List any additional applicable guideline, policy statement, or statute.

9. UPWARD OR DOWNWARD DEPARTURE (U.S.S.G. ch. 5, pts. H & K)

List any applicable aggravating or mitigating circumstance that might support a term of imprisonment above or below the applicable guideline range. _____

No.	Project Name	Company	City, State	Principals	Wire Date	Wire Amount	Check Date	Check Amount
1	29 SFR Bridge Loan	City Space	Philadelphia, PA	Ala Rabady	5/24/2011	\$1,500		
2	AAA Self Storage Depot	AAA Self Storage	South Plainfield, NJ	Larry & Donna Clark	6/15/2010	\$8,500		
3	B & D Dental	B & D Dental	Salt Lake City, UT	Benjamin Jung and Steve Campbell	8/9/2010	\$5,000		
4	Bartone Plaza	Bartone Properties	Farmingdale, NY	Anthony Bartone	9/10/2010	\$15,000		
5	Belton City Mini Storage	Spectrum Service Inc.	Lenwood, KS	William Textor	1/19/2010	\$7,500		
6	Blue Lagoon	LHF Development, LLC	Aurora, CO	Lionel Foster	11/1/2010	\$4,500		
7	Briarcliff Marriott Kansas City	BC Fund 1	Kansas City, MO	Dan Carr		Check	9/12/2008	\$25,000
8	CHAJP	CHAJP, Inc.	Pennsauken, NJ	Christine Harper & Phil Mckeaney	6/24/2011	\$5,000		
9	Chattooga Walk	MPE Enterprises	Westlake, OH	Marty Eynon	8/16/2010	\$12,500		
10	CMK Investments	CMK Investments	Battleground, WA	Michael & Kelly Achen	5/29/2009	\$15,000		
11	Comanche Condominiums	Unique Homes of Texas	Betram, TX	Ryan Haberer	1/29/2009	\$15,000		
12	Daytona Inn		Daytona Beach, FL	Waldemar Ruchinski	4/11/2011	\$3,500		
13	Devington Community Development	Devington Community Development	Indianapolis, IN	Sharon Arnold	6/9/2011	\$7,500		
14	Dogwood Lakes	Riverside Bldg Supply	Mount Airy, NC	Richard Vaughn	10/16/2009	\$15,000		
15	Durocher		Fenton, MI	Gerald Durocher, Sr.	3/17/2009	\$7,500		
16	Evergreen Development		Stephens, AR	Jay Pittman	9/29/2010	\$7,500		
17	Excel Acquisition	New Phase Communication	Ashland, MO	Marty Schell	6/9/2009	\$25,000		
18	Fairmont Park Senior Center	The Expo Group, Inc.	Boca Raton, FL	Andrei Berger	6/3/2011	\$15,000		
19	Fuji Plaza		Concord, NC	Xiao Ling Yu and Chao Rong Pu	5/12/2010	\$10,000		
20	Good Knight Inn	Roy Property Management	Northridge, CA	Rob Sarthou	12/22/2009	\$2,000		
21	Greenspot Village and Market Place	Greenspot Village and Market Place	Redlands, CA	Glenn Elssman	12/3/2008	\$25,000		
22	Hilton Garden Inn	Helm Builders	Apex, NC	Scott McAllister	5/12/2010	\$7,500		
23	Holiday Inn	Removal Corp	Peaskill, NY	George Liaskos	9/10/2010	\$15,000		
24	Jabez Properties		Gig Harbor, WA	John R. Gray	9/3/2008	\$10,000		
25	Keystone Garden Estate		Larksville, PA	Jennifer Menichini	3/2/2011	\$7,500		
26	KGN Investments		Parker, CO	Keith & Gary Nylund	12/17/2010	\$5,000		
27	Kuakini Villas Condominium	BLM Properties & CBM Mukilteo	Lynnwood, WA	Clifford Moon	7/13/2010	\$8,500		
28	Mahogany	Mahogany	Mays Landing, NJ	George M. and George B. Aaron	12/13/2010	\$15,000		
29	MVP Lanes	MVP Lanes, LLC	Baltimore, MD	Marc Rosen	6/8/2010	\$25,000		
30	Pine Meadows Homes		Coeur d'Alene, Idaho	David Rousher	10/28/2008	\$25,000		
31	Puerto Penasco	Clancy International	Phoenix, AZ	Joan Clancy	3/30/2009	\$25,000		
32	Ragged Mountain Pacific	RMR Pacific LLC	Salt Lake, UT	Doug Strong and Dave Anderson	10/18/2010	\$20,000		
33	New Jersey Health Care Center	Rio Vista Companies	Oradell, NJ	John Mavroudis	11/12/2009	\$15,000		
34	San Luis Rio Colorado Power Plant	North Branch Holding	Miami, FL	Joseph Bojnowski and Jorge Barona	7/27/2010	\$40,000		
35	Serino's Italian Food	Serino's Italian Food Mfg	Hyde Park, MA	Paul Serino	2/16/2010	\$10,000		
36	Tract Y Islands of Doral	Century Home Builders	Doral, FL	Cesar Llano		Check	12/18/2008	\$25,000
37	Cottages at Canyon View	Black Pearl LLC	Midvale, UT	Michael Spencer & T. Naylor (Wade)	10/14/2008	\$25,000		
38	Waretech	Catellus Group	Charlotte, NC	Stephen and Derek Barker	3/2/2011	\$15,000		
39	Wasioto Hotel and Resort		Wilkesboro, NC	Maurice Elledge	10/15/2010	\$5,000		
40	Wirrina Cove	Wirrina Development Corporation	Bella Vista, Australia	Adam Fahim	11/27/2009	\$17,475		
41	World Imported Motorcars	World Imported Motorcars	Neptune, NJ	Keith Lawson		Check	3/16/2009	\$12,500
42	Ventura Place	Jayeff Construction Corp	Manasquan, NJ	Jack Zoeller & Dennis Tynes	3/4/2009	\$18,500		
43	Shell Pointe Residences			George Heaton	9/4/2008	\$25,000		

\$541,975

\$62,500

Restitution Total

\$604,475